

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

TROY EDWIN NEHLS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 3:25-cv-112

**THE UNITED STATES' UNOPPOSED MOTION TO VACATE OR EXTEND
THE CURRENT DEADLINE TO RESPOND TO THE AMENDED COMPLAINT**

Pursuant to Fed. R. Civ. P. 6(b), Defendant, United States of America, respectfully moves to vacate the current deadline for the filing of its response to Plaintiff's Amended Complaint, or, in the alternative, extend the deadline for the filing of its response by at least 30 days. *See* Fed. R. Civ. P. 15(a)(3) (stating any response to an amended pleading is due 14 days after service of the amended pleading).¹ Plaintiff consents to the requested relief.

On April 10, 2025, Plaintiff, a Congressman, filed the instant action asserting claims for invasion of privacy and trespass pursuant to the FTCA, and various

¹ The United States recognizes that the case is currently stayed pending transfer of the case to the District Court for the District of Columbia. This motion is filed only in an abundance of caution to ensure the United States preserves its ability to file a response to the Amended Complaint.

constitutional claims.² *See generally* ECF No. 1. The gravamen of Plaintiff’s complaint was that that a U.S. Capitol Police (“USCP”) officer, while on patrol of the U.S. Capitol Building, entered Plaintiff’s Congressional office and photographed a whiteboard that was displayed in the office, and which contained the Congressman’s notes on legislation that he intended to present to Congress. *See id.* ¶¶ 8-13.

On June 20, 2025, the United States filed a motion to dismiss the Complaint in its entirety because Plaintiff failed to plausibly allege invasion of privacy or trespass claims under the FTCA—and thus the United States did not waive its sovereign immunity with regard to those claims—and Plaintiff’s constitutional claims failed as a matter of law because the United States has not waived sovereign immunity for constitutional claims. In the alternative, the United States explained that a transfer of venue to the District Court for the District of Columbia was warranted because the alleged acts that form the basis of Plaintiff’s claims occurred there, and the relevant witnesses and evidence are located there. *See* ECF No. 14.

On July 11, 2025, Plaintiff filed an Opposition to the United States’ motion to dismiss and simultaneously filed an Amended Complaint. *See* ECF Nos. 17, 18. Given that Plaintiff filed an Amended Complaint, the United States’ original motion to dismiss is now moot and the Amended Complaint is the operative complaint. *See Probedo Technologies Corp. v. Smartnet, Inc.*, No. C-09-349, 2010 WL 918573, at *1 (S.D. Tex. May 12, 2010) (“If an amended complaint does not incorporate the earlier pleading, a

² With respect to the invasion of privacy claims, Plaintiff asserted claims for intrusion upon seclusion and the publication of private facts.

court may deny as moot a motion to dismiss that was filed before the operative amended complaint.”); *Swiss Digital USA Co., Ltd. V. Wenger S.A.*, No. 6:21-cv-00453-ADA-DTG, 2022 WL 1477625, at *1 (W.D. Tex. May 10, 2022) (noting that an amended complaint renders pending motions moot). The Amended Complaint includes several new and modified allegations as well as an entirely new invasion of privacy claim.³ *See generally* ECF 18. Pursuant to Fed. R. Civ. 15(a)(3), the United States’ response to the Amended Complaint is due by July 25, 2025.

The Court has discretion to vacate or extend the current response deadline for “good cause.” Fed. R. Civ. P. 6(b)(1). Good cause exists to vacate or extend the current deadline by at least 30 days. On July 14, 2025, the Court granted the United States’ motion to transfer venue to the District of Columbia, and it simultaneously stayed the case for 21 days pending the transfer of venue. *See* ECF No. 19. Vacating or extending the current response deadline will ensure that the case is transferred to the District of Columbia; the transferee court is able to set deadlines that it deems appropriate for the United States’ response to the Amended Complaint; and it allows the transferee court to review the United States’ response. Moreover, additional time will provide the United States with the opportunity to fully assess the new allegations and claim in the Amended Complaint and to prepare a response.

³ Plaintiff now alleges an invasion of privacy claim based on the placement of Plaintiff in a false light. *See* ECF No. 18, Count IV.

CONCLUSION

For the foregoing reasons, the United States respectfully requests the Court vacate the current deadline for the filing of a response to the Amended Complaint or, in the alternative, extend the deadline for filing of a response to the Amended Complaint by 30 days, to and including August 24, 2025.

DATED: July 18, 2025

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

In accordance with Local Rule 7.1, Defendants conferred with counsel for Plaintiff via email on July 17, 2025. Plaintiff's counsel has indicated that he consents to this motion.

/s/Kristin McGrory
KRISTIN MCGRORY

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2025, I served the foregoing on counsel for Plaintiffs via the CM/ECF Filing System.

/s/Kristin McGrory
KRISTIN MCGRORY